

ROADS AND MARITIME SERVICES

**NSW ICAC
EXHIBIT****STATEMENT IN THE MATTER OF:****ICAC Inquiry into allegations concerning the conduct of heavy vehicle assessments****Place: 101 Miller Street, North Sydney****Name: Mario Testa****Address: C/- 99 Phillip Street, Parramatta****Position: Team Leader, Compliance & Assurance****Telephone: 8837 0362****Date: 9 October 2013****Introduction**

1. I am employed by Roads and Maritime Services (RMS) in the position of Team Leader, Compliance & Assurance. I have held this position since October 2008.
2. I started working with RMS (then the RTA) in 1990 as a Driver Testing Officer. I held that position until about February 2002 when I changed roles to become a Driver Testing Compliance Officer. I held that role until I took up my current position in October 2008.
3. Exhibited to this statement and shown to me at the time of making this statement is a bundle of documents marked "MT1" (Exhibit MT1). In this statement I refer to those documents by reference to their divider number within Exhibit MT1.
4. This statement made by me accurately sets out the evidence which I would be prepared, if necessary, to give in court as a witness. The statement is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated anything which I know to be false or do not believe to be true.
5. I am authorised to make this statement for and on behalf of RMS.

The Compliance and Assurance Unit

6. The Compliance and Assurance Unit sits under the Customer Service Branch within RMS and the Safety and Compliance Division.
7. The Compliance and Assurance Unit is responsible for (among other things):
 - (a) The planning, implementation, monitoring and reporting of compliance and assurance programs of works;

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- (b) Ensuring the uniform testing and assessment of driver, rider and Heavy Vehicle Competency Based Assessment (HVCBA);
 - (c) Ensuring compliance with testing standards and the Driving Instructors Act 1992 and Driving Instructors Regulation 2009;
 - (d) Managing the auditing of HVCBA assessors; and
 - (e) Providing business solutions to contain risks.
8. Prior to 2008 there were two separate units called the Driver Testing Unit and the Driver Testing Compliance Unit. Training of HVCBA assessors was conducted by staff of the Driver Testing Unit. In 2008, the Driver Testing Unit and the Driver Testing Compliance Unit were combined to form the Compliance and Assurance Unit. Training of HVCBA assessors was continued to be conducted by staff of the Compliance and Assurance Unit. Two compliance officers were responsible for that training which was conducted approximately three to four times a year. Prior to about 2010 the training was conducted over a five day period. In about 2010 the length of the training was extended to a ten day period.
9. The Compliance and Assurance Unit has 12 staff comprising one Administration Officer, 8 Compliance Officers, 2 Team Leaders and a Manager. The compliance officers are located in the following places:
- (a) One in Orange;
 - (b) One in Wagga Wagga;
 - (c) One in Wollongong;
 - (d) One in Newcastle;
 - (e) One in Grafton; and
 - (f) Three in Sydney.

When members of the unit are on leave they are not replaced unless it is for an extensive period of time such as long service leave.

My Current Position as Team Leader, Compliance and Assurance

10. In my current position of Team Leader, Compliance and Assurance I report to Mark McIver who is the Manager of Compliance and Assurance. Mark McIver reports to Monica Benivento who is the Acting Manager, Customer Service Training.
11. In my current position of Team Leader, Compliance and Assurance I hold responsibilities such as facilitating compliance with testing standards, managing

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and monitoring audits and investigations as well as managing relationships with internal and external stakeholders under the direction of the Manager.

12. In the period from 2002 to 2008 when I held the position of Driving Testing Compliance Officer, my role also included acting as an RMS audit officer for the auditing of HVCBA assessors.
13. In my role as Team Leader in the Compliance Assurance Unit, I have a day to day role in the administration and monitoring of the HVCBA auditing process conducted by RMS.

Obligation of HVCBA Assessors to notify RMS of a Final Competency Based Assessment or Competency Test

14. Final Competency Assessment (FCA) or Competency Test (CT) (if applicable) is the final assessment undertaken by a HVCBA applicant in order to obtain a Heavy Vehicle licence.
15. The RMS Compliance and Assurance Unit manages the process by which HVCBA assessors conducting FCAs or CTs under HVCBA are audited. The purpose of RMS undertaking these audits is to gain assurance on whether assessors are complying with HVCBA requirements in assessing heavy vehicle licence applicants.
16. The requirement to provide notification of a FCA or CT booking has not changed since the new national HVCBA framework was implemented in January 2013. HVCBA assessors are still required to report each FCA or CT 48 hours' prior to the FCA or CT taking place. This is to enable RMS enough time to arrange an audit of the assessor at the assessors' nominated route.
17. The requirement to notify RMS of each scheduled FCA or CT is set out in section 23 of the HVCBA Assessment Procedures (as applicable prior to 1 January 2013) and section 18 of the HVCBA Business Procedures Manual (as applicable from 1 January 2013).

Prior to 1 January 2013

18. Prior to 1 January 2013, assessors were required to report each FCA to RMS via facsimile number (02) 8837 0120 or by telephone number 1800 642 452.
19. A template FCA form was made available to all assessors for the purpose of the assessor notifying the FCA to RMS by facsimile. RMS did not accept the FCA forms by post.
20. The FCA notification form required a number of details to be completed by the assessor including the applicant's details, the licence class, the number of seats in the vehicle to be used for the assessment, the date, day and time of the assessment and the proposed circuit name and number, details of the vehicle

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including gearbox type and whether the vehicle was owned by the assessor or privately owned.

- 21. A copy of the FCA notification fax form which was in use as at 2011 is shown at page 20 of the HVCBA Assessment Procedures v 7.7 (implemented 1 August 2011).
- 22. At divider 25 of Exhibit MT1 is a copy of the FCA facsimile transmission form which was the same form as used by HVCBA assessors during the year 2011.

After 1 January 2013

- 23. From 1 January 2013, assessors or registered training organisation (RTO) administration staff must report the scheduled FCA or CT to RMS via the Heavy Vehicle Competency Online Reporting System (HVCORS). The RTO's are accredited by the Australian Skills Quality Authority (ASQA). ASQA, which is the national vocational regulator for the VET sector, manages RTOs to ensure nationally approved quality standards for the education and training of heavy vehicle licence applicants.
- 24. Under the new HVCBA system since 1 January 2013, assessors and/or their RTO are still required to notify RMS a minimum of 48 hours prior to the time of the scheduled FCA/CT.
- 25. HVCORS provides RMS with superior ability to monitor and detect the compliance of assessors than the old manual system.
- 26. HVCORS requires the assessor to book an FCA/CT for a result to be recorded against the applicant. The system validates the vehicle registration number against RMS's Vehicle Registration and Driver Licensing System (DRIVES) used by RMS motor registries to determine if the vehicle meets the class of licence requirement. If there is no FCA/CT booking in HVCORS, no result can be recorded for the applicant and the applicant is prevented from obtaining a heavy vehicle licence from a RMS motor registry. HVCORS provides real-time information to registry staff for the purposes of issuing heavy vehicle licences.

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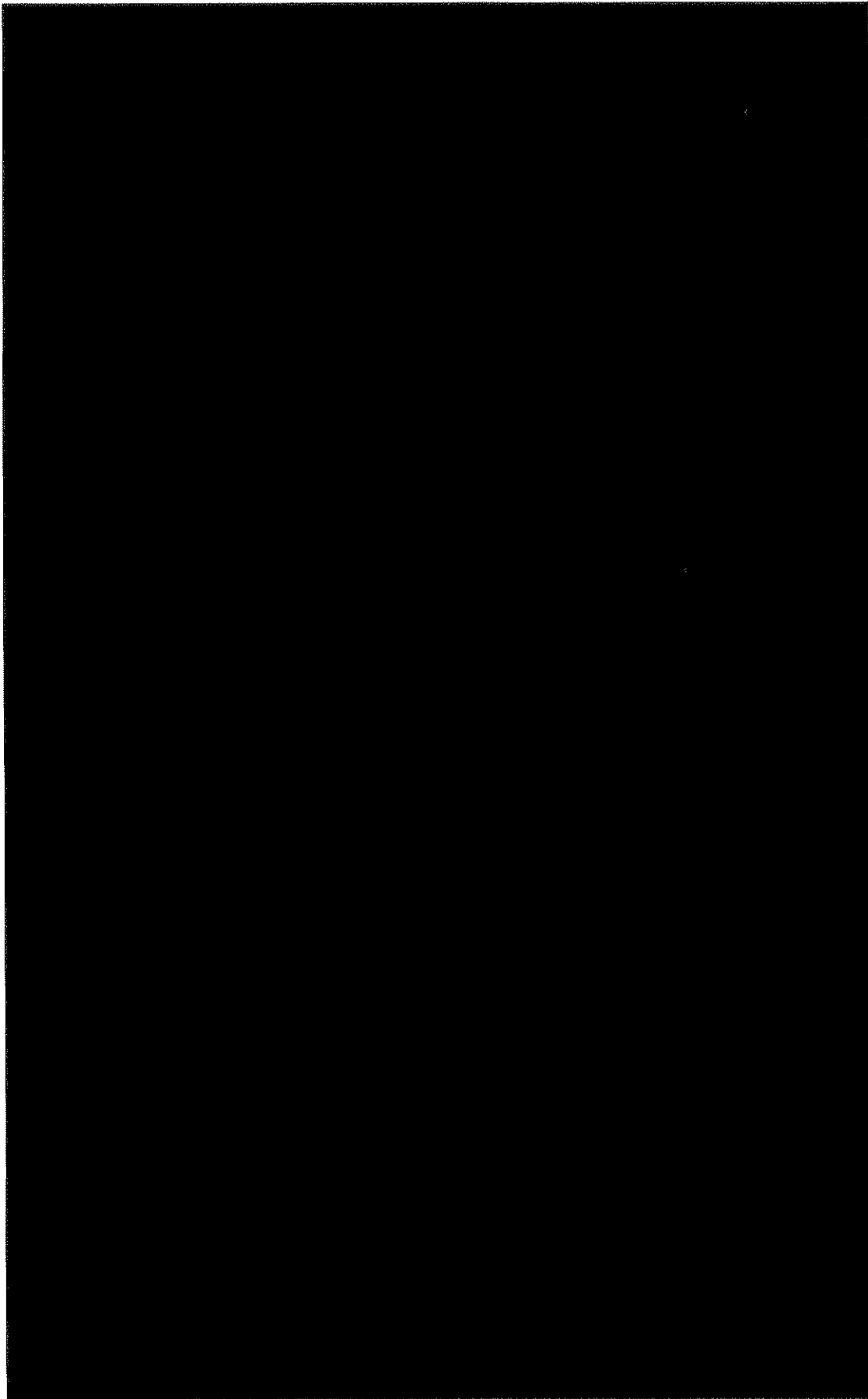


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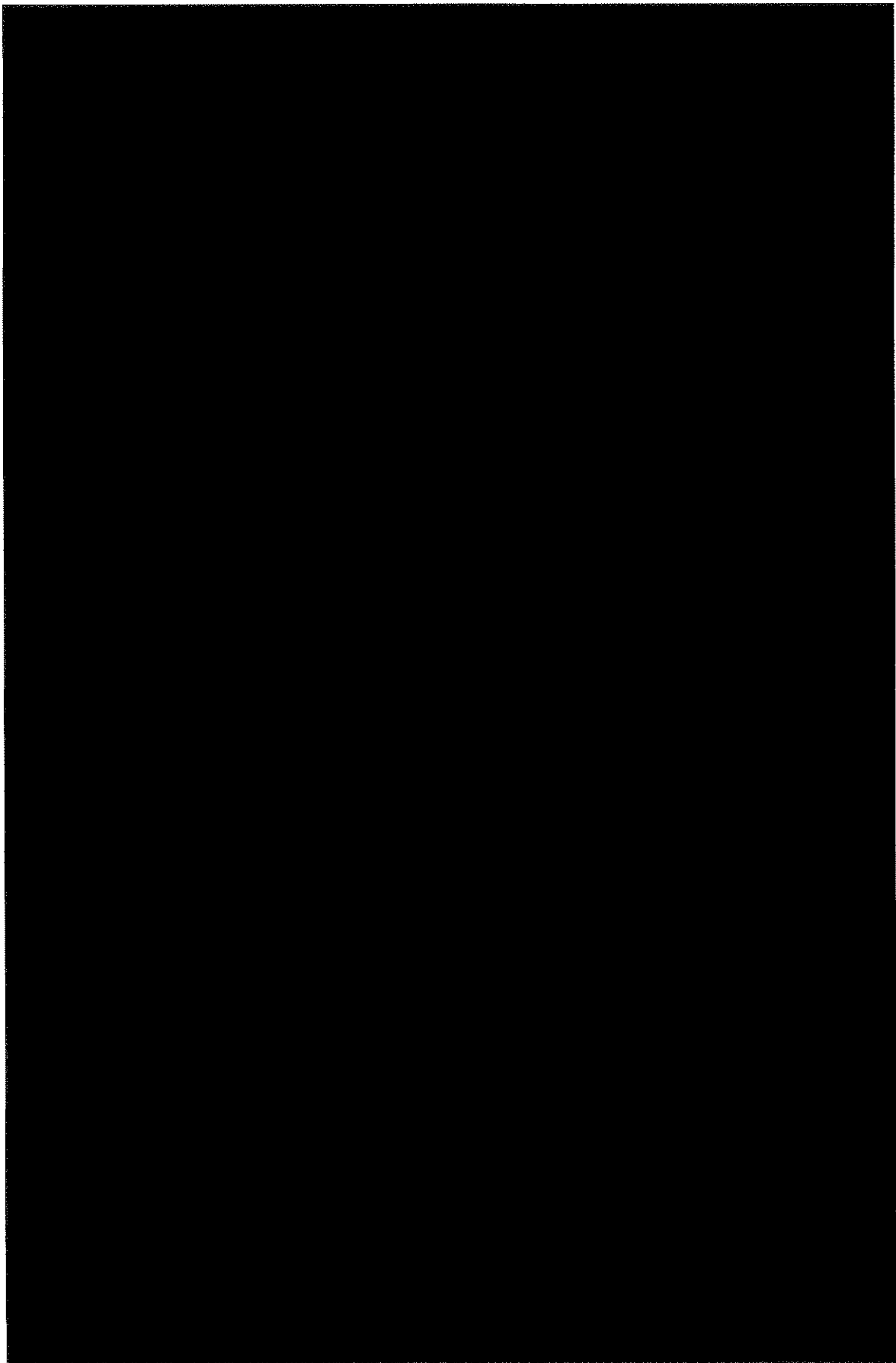
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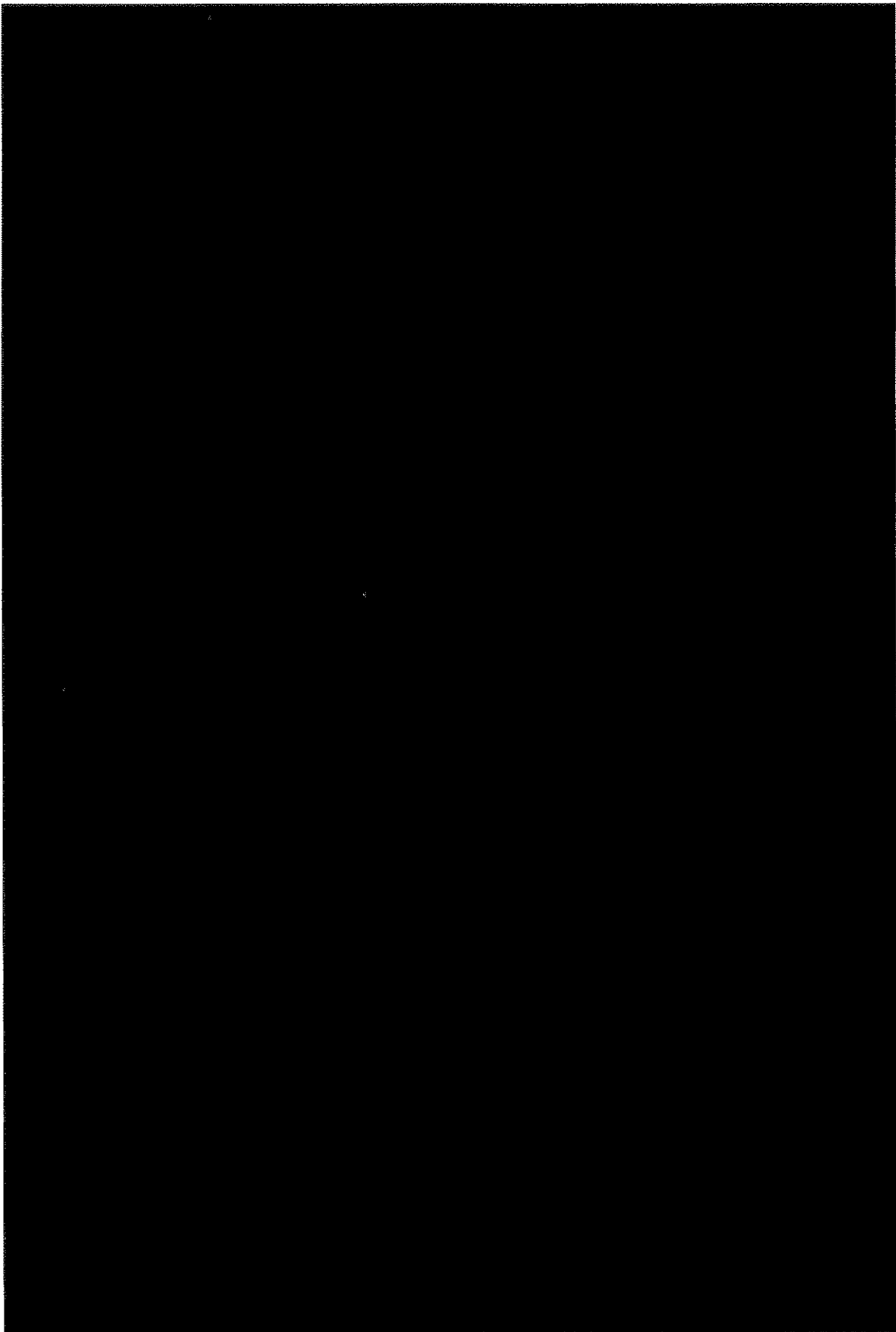
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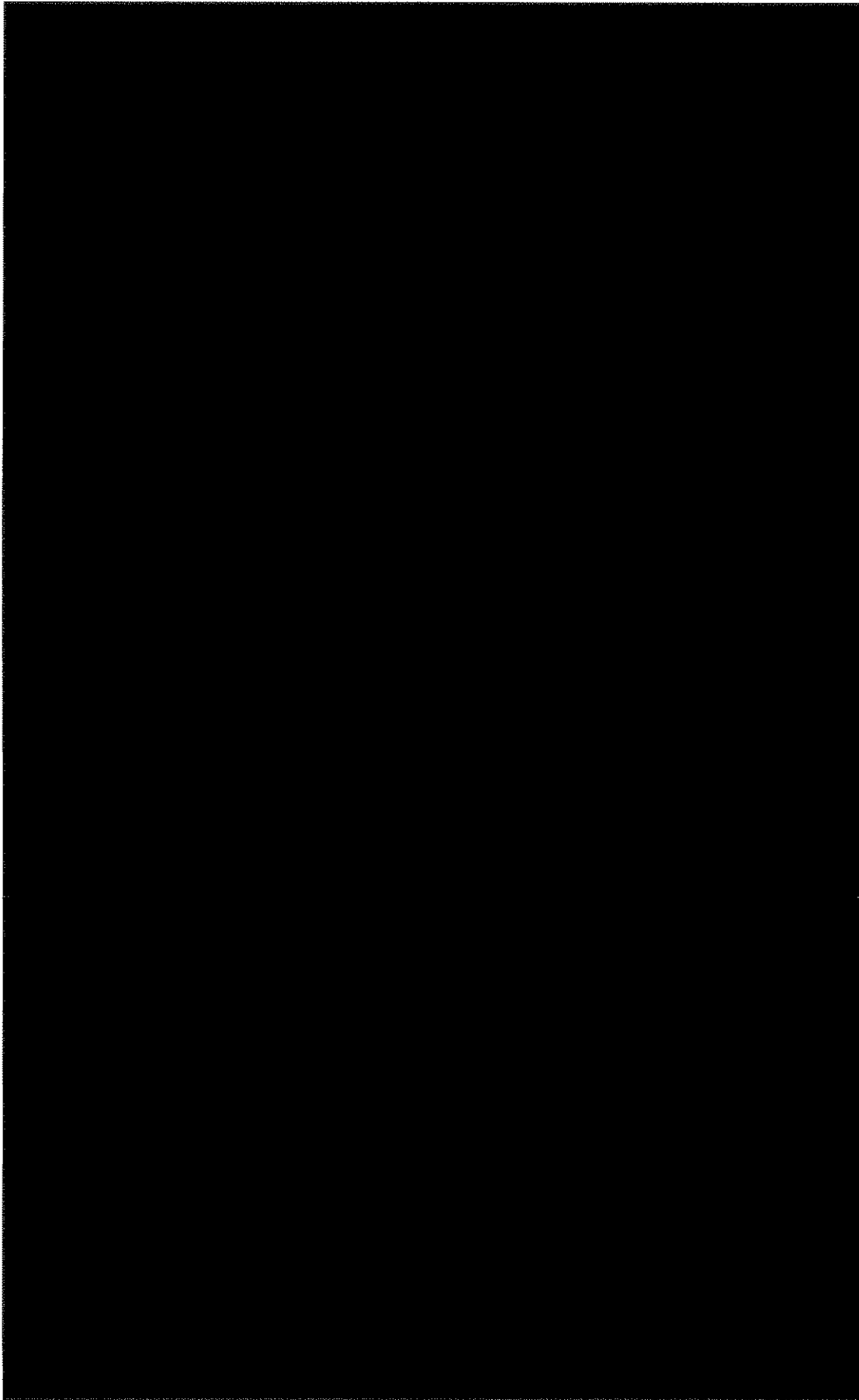
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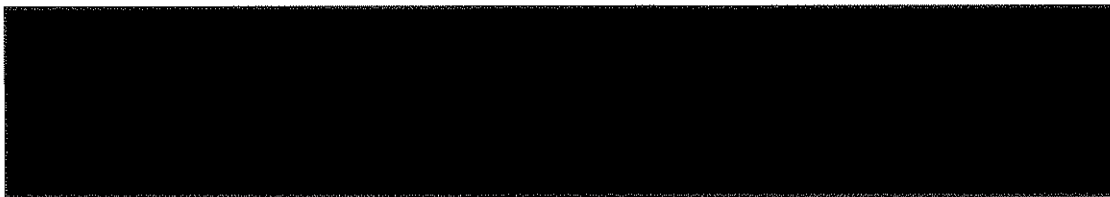
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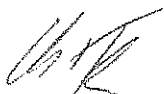



Training undertaken by the Driver Testing Unit in 2004

46. I have examined the records of the Compliance and Assurance Unit and have identified the following documents that were used in 2004 in the training of HVCBA assessors by the Driver Testing Unit:
- (a) A powerpoint presentation for the HVCBA assessor training course (**Presentation**); and
 - (b) The Code of Ethics in force in 2004.
47. At divider 1 of Exhibit MT1 is a copy of the Presentation.
48. Participants in the training of HVCBA assessment in 2004 and after that time have received a package of materials which included the current version of the RTA/RMS code of ethics.

History of Christopher Binos as a HVCBA assessor

49. Prior to the introduction of the national HVCBA scheme in January 2013 the Compliance and Assurance Unit maintained a separate file for each accredited HVCBA assessor which included accreditation documents, agreements with the assessor and any complaints. Agreements with assessors were called 'HVCBA Service Provider Agreements' which comprised standard terms and conditions with a schedule containing relevant material pertaining to the relevant assessor. I am aware from having inspected many files relating to HVCBA assessors that standard terms and conditions of the applicable HVCBA service provider agreements were not always included within the file. Set out below in paragraphs 50 to 55 are documents from the file for Mr Christopher Binos.
50. On 26 October 2004, Mr Binos submitted an Application for Driving Assessor Accreditation for HVCBA (**Application**) to the RTA. At divider 2 of exhibit MT1 is a copy of that Application.
51. On 8 November 2004, HVCBA accreditation documentation was processed and Mr Binos's details were entered into the RTA DRIVES system. At divider 3 of Exhibit MT1 is a copy of a document titled "Processing of Accreditation Documentation for Heavy Vehicle Competency Based Assessor/s and Providers 2004". At divider 4 of Exhibit MT1 is a copy of the RTA certificate issued to Mr Binos accrediting him to conduct HVCBA driving assessments for the Heavy Vehicle classes LR, MR and HR (valid to 31 July 2005).

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52. On or about 8 November 2004, Mr Binos entered into an HVCBA Service Provider Agreement for HVCBA with the RTA (**Service Provider Agreement**). At divider 5 of Exhibit MT1 is a copy of the Service Provider Agreement between the RTA and Mr Binos.
53. The Service Provider Agreement was renewed until the final agreement with RMS expired on 31 December 2012. A copy of the relevant renewal and other accreditation documentation relating to Mr Binos is located in Exhibit MT1 as follows:
- (a) At divider 6 is a copy of Mr Bino's Service Provider Agreement for HVCBA dated 11 April 2006 and Application for Renewal of Driving Assessor Accreditation for HVCBA dated 11 April 2005;
 - (b) At divider 7 is a copy of Mr Bino's HVCBA accreditation certificate for Heavy Vehicle classes LR, MR and HR valid to 31 July 2008 and a copy of his Heavy Vehicle Driver's Licence with expiry date 14 July 2010;
 - (c) At divider 8 is a copy of Mr Bino's Service Provider Agreement for HVCBA dated 17 June 2008 and Application for Renewal of Driving Assessor Accreditation for HVCBA dated 11 April 2008;
 - (d) At divider 9 of Exhibit MT1 is a copy of a Driving Instructor's Licence for Mr Binos valid to 26 June 2009.
 - (e) At divider 10 is a copy of a Certificate IV in Transport and Logistics (Road Transport - Heavy Vehicle Driving Instruction) dated 7 November 2011 in the name of Mr Binos;
 - (f) At divider 11 is a copy of a Confirmation of Contract Extension dated 15 August 2011 for Mr Binos as a HVCBA provider representative;
 - (g) At divider 12 is a copy of an Application for Renewal of Driving Assessor Accreditation for HVCBA dated 15 August 2011 for Mr Binos; and
 - (h) At divider 13 is a copy of a document titled "Heavy Vehicle Competency Based Assessment (HVCBA) Assessor Accreditation" dated 15 August 2011 signed and in the name of Mr Binos. That document states that he was aware of his obligation in relation to the HVCBA Assessment Procedures effective 1 August 2011 and that he had received a copy of the Assessment Procedures v7.6 and 2011 Compulsory FCA Notification Fax Sheet.
54. Audits conducted of Mr Binos during the period December 2004 to March 2012 note that he was associated with A&L Driving School in 2006 and 2007, Ultimate Driving School in 2007, 2008 and 2009 and FHV Driver Training in 2010 and 2011.

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55. At divider 15 of Exhibit MT1 is a copy of an Accreditation Agreement for HVCBA dated 26 September 2012 (**Accreditation Agreement**) between RMS and RTO Forklift Training & Licensing (**Forklift**). Attached at the back of that document is also the following:
- (a) an Assessor Deed Poll dated 19 December 2012 stating that Forklift proposes to appoint Mr Binos as an assessor under the Accreditation Agreement;
 - (b) a copy of Mr Binos's NSW Driving Instructor's Licence with expiry date 26 June 2014 for HR heavy vehicle class;
 - (c) a copy of Mr Binos's NSW Heavy Vehicle Driver Licence with expiry date 14 July 2014 for HC heavy vehicle licence class; and
 - (d) a copy of Mr Binos's licence with expiry date 26 June 2014 for HR heavy vehicle class.

Case Register Entries, Complaints and Audits of Christopher Binos

56. The practice of the Driver Testing Unit and the Driver Testing Compliance Unit prior to 2008, and within the Compliance and Assurance Unit from 2008, was where an HVCBA assessor had 3 unsatisfactory audits was to seek a response from the HVCBA assessor to the three unsatisfactory audits.

Audits conducted on Mr Binos

57. Between the period December 2004 to March 2012, 35 HVCBA audits were conducted on Mr Binos by RMS testing auditors. A copy of each of the audit reports from those audits is at divider 31 of Exhibit MT1.
58. There were 3 unsatisfactory audit reports in 2005 in relation to Mr Binos. Mr Binos supplied a response dated 25 February 2005 in relation to one of those audits stating that he had made an error with the times for the FCAs. His response was placed on file. A copy of RMS case register file relating to these 3 audits is at divider 30 of Exhibit MT1.

Complaints

59. At divider 29 of Exhibit MT1 are copies of RMS case register entries pertaining to Mr Binos.
60. On 17 April 2012, a complaint was received in relation to Mr Binos. A written response was requested from Mr Binos and received from Mr Binos on 20 April 2012. At divider 14 of Exhibit MT1 is a copy of the RMS case file in relation to that complaint and the response received from Mr Binos.

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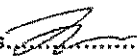
- 61. On 12 September 2012, RMS received advice from its Ethics Hotline that Mr Binos from Ace Truck Training Group had solicited an applicant for the issue of a NSW heavy vehicle drivers licence. This allegation led to an investigation by RMS' Compliance and Assurance Unit on the activities of Mr Binos.
- 62. On 26 September 2012, RMS' Compliance and Assurance staff interviewed and obtained a statement from the informant and this matter was reported to Blacktown Police (Event no. E49540804). This matter was later reported by RMS to ICAC.

RMS Disciplinary action and investigations concerning Christopher Binos

- 63. Earlier this year the Compliance Assurance Unit undertook a review of its records relating to Mr Binos. This revealed that during the period 1 June 2012 to 19 April 2013, a total of 101 clients were assessed by Mr Binos in circumstances where he failed to advise RMS of his intention to conduct a FCA/CT in accordance with RMS' HVCBA procedures.
- 64. On 24 April 2013, Mr Binos was suspended by RMS from conducting HVCBA assessments for failing to advise RMS of the intention to conduct a FCA by either telephone, facsimile or HVCORS. A copy of this notice of suspension addressed to Forklift Training & Licensing is at divider 17 of Exhibit MT1.
- 65. In early May 2013, the Compliance and Assurance Unit selected a sample group of clients of Mr Binos whose heavy vehicle licences were upgraded without an FCA being reported to RMS. A total of 40 clients were selected and calling cards were delivered to their current addresses as recorded on DRIVES. Of the 40 clients contacted, 23 responded and 9 agreed to participate in an interview. These interviews were undertaken by Peter Young, the other Team Lead of the Compliance and Assurance Unit. At divider 20 of Exhibit MT1 is a copy of a spreadsheet detailing the persons contacted for interview and some information obtained during those interviews. At divider 21 of Exhibit MT1 is a copy of the interview questionnaire records taken during those interviews.
- 66. On 17 May 2013, a notice to show cause letter was issued to Mr Binos by RMS giving him 21 days' notice to show cause why his Driving Instructor's Licence should not be cancelled. A copy of this notice is at divider 18 of Exhibit MT1.
- 67. RMS received a letter dated 18 May 2013 from Mr Binos (unsigned) on the letterhead of RPL Assessments. A copy of this letter is at divider 19 of Exhibit MT1.
- 68. On 26 June 2013, Mr Binos' HR Driving Instructors Licence was cancelled by RMS. A copy of the notice sent to Mr Binos advising of this cancellation is at divider 22 of Exhibit MT1.

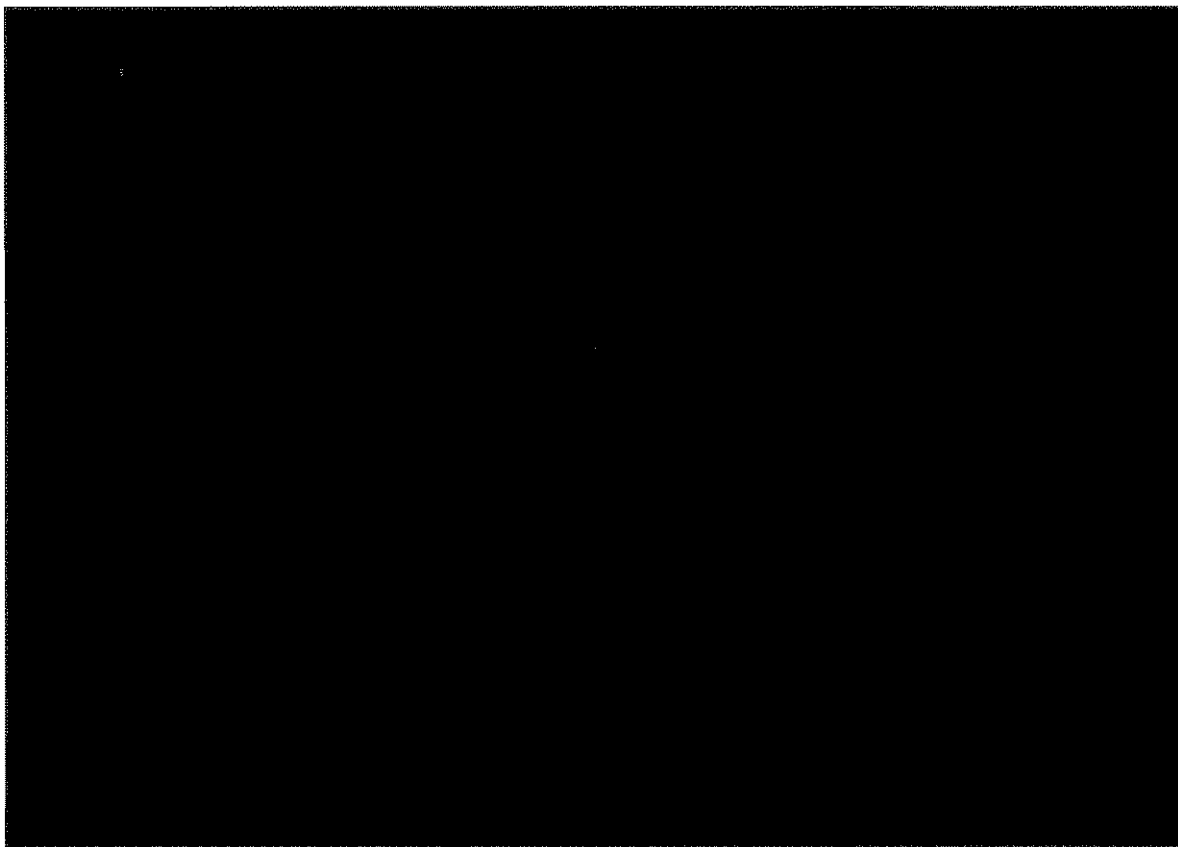
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Development of an Audit Plan and Risk Analysis Framework



A handwritten signature in black ink, appearing to read 'M. Testa', is positioned above a horizontal line.

Mario Testa
9 October 2013

Signature
Mario Testa

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